



Paper No. 7

WITHROW & TERRANOVA, P.L.L.C.
P.O. BOX 1287
CARY, NC 27512

COPY MAILED

AUG 28 2002

OFFICE OF PETITIONS

In re Application of
Kelvin Kar-Kin Au
Application No. 10/050,091
Filed: November 16, 2001
Attorney Docket No. 7000-107

:
: LETTER GRANTING
: FILING DATE
:
:

This is a response to petition to correct filing date and request to correct filing receipt, filed on April 8, 2002 and again by facsimile transmission on July 11, 2002, which is being treated as a submission under 37 CFR 1.6(e) requesting that the above-identified application be accorded a filing date of November 16, 2001, rather than the presently accorded filing date of January 17, 2002.

The USPTO is aware that the USPS suspended Express Mail service to Washington, D.C. ZIP Codes 202XX through 205XX (e.g. 20231) from November 16, 2001, through November 29, 2001. On October 9, 2001, the USPTO published a notice in the Official Gazette providing guidance in the situation in which a post office refuses to accept the deposit of mail for delivery by Express Mail service.¹ The guidance set forth in that notice also applies if a post office refuses to accept the deposit of correspondence for delivery by Express Mail due to the suspension of the USPS's Express Mail service to Washington, D.C., ZIP Code 20231, as well as the situation in which correspondence is returned as undeliverable due to this suspension.

The guidance set forth in the above-mentioned Official Gazette notice is reproduced below:

Where the USPS refuses to accept the deposit of mail for delivery by express mail.

In some cases, due to the recent emergency, certain post offices are refusing to accept the deposit of mail for delivery by Express Mail service. The USPTO is also designating this interruption in the Express Mail service of the USPS as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). In addition, if a party attempts to deposit correspondence for delivery to the USPTO with the USPS by Express Mail under 37 CFR 1.10 ("Express Mail Post Office to

¹ See United States Postal Service Interruption and Emergency, 1251 Off. Gaz. Pat. Office 55 (October 9, 2001).

Addressee") and the USPS refuses to accept such correspondence, the party is advised to take the following action: mail the correspondence to the USPTO by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail. The statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence. The statement must be signed in accordance with 37 CFR 10.18. The correspondence should be mailed as set out in 37 CFR 1.1(a) and include the special box designation: BOX FILING DATE.

The submission filed by facsimile transmission on July 11, 2002, the original of which is located among the original application papers received on April 8, 2002, states that Jennifer Garrison, counsel's paralegal, attempted to deposit the application with the United States Postal Service (USPS) via Express Mail on Friday, November 16, 2001, but the USPS refused to accept the correspondence. Ms. Garrison then deposited the application in first class mail on Monday, November 19, 2001. Based on the submissions filed on April 8, 2002 and July 11, 2002, it is concluded that the present application would have been filed on November 16, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of November 16, 2001.

No petition fee is required.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of November 16, 2001.

Telephone inquiries specific to this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with large, connected letters.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy